(3) DEPOSITION OF DENNIS CAREY.

Examination by Mr. Engelman:

Q. Your full name is Dennis Carey, is it sir? A. Yes.

Q. You reside where, sir? A. At 48 Chapel Road, Manhasset, New York.

Q. What is your business address, sir? A. 38-15 Review Avenue, Long Island City 1, New York.

Q. What company? (4) A. Peerless Oil and Chemical Corp.

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Q. Now, Mr. Casey, are you an officer of Peerless New York? A. Yes.

Q. What office do you hold with Peerless New York? A. President.

Q. Will you tell me who the other officers of Peerless New York are? A. John R. Carey is the Vice-president.

Q. Yes, sir? A. Edward M. Carey is Chairman of the Board of Directors. Those are the only other officers.

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(5) How long has Peerless New York been in business? A. Since 1945.

Q. What is the nature of the business of Peerless New York. A. Marketing and distributing of chemicals and petroleum products.

Q. Now, how many directors are there of the defendant Peerless New York? A. The directors are the officers, Edward M. Carey, myself, John R. Carey.

Q. The stockholders of the defendant Peerless New York, how many are there? A. The stockholders are the same, the directors, Edward M. Carey, myself, and John R. Carey.

Q. None other? A. None other.

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(8) Q. Did there come a time when either you or (9) Edward M. Carey, or John R. Carey decided to organize the Puerto Rican Corporation? A. Yes.

Q. When did you gentlemen decide to do that? A. That was done in the beginning of 1959.

Q. You had those discussions here in New York, I take it? This is before the Puerto Rican Corporation was organized? A. This was principally my responsibility. The other people involved whose names I mentioned had practically no contact with this Puerto Rican venture.

Q. In other words it was your "baby" or your "thought" or your "child"; is that it? A. That's correct.

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(12) Q. And you had in mind a Puerto Rican Corporation to engage in what business, sir? A. In the marketing and distributing of industrial chemicals in Puerto Rico.

Q. And do you refer to the marketing and distribution of industrial chemicals? A. Yes.

Q. They would be generally the same type of chemicals that Peerless New York was marketing and distributing here in New York; is that right? A. No. Some were quite different.

Q. Would some be the same? A. Some are the same.

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(17) Q. Who were the incorporators of Peerless Puerto Rico? A. That I don't have available. It was incorporated by the attorney in Puerto Rico. I think the original incorporators were personally in his office, and it was subsequently changed to the present directors. I think the phrase used is "dummy incorporated." I don't know if that is correct or not.

Q. What was the name and address of the attorney in Puerto Rico who organized the Puerto Rican corporation? A. It is Jose Guellmo Vivas. He is in the Banco DePonce building, Ponce, Puerto Rico.

Deposition of Dennis Carey.

Q. Do you have with you any papers in your file which would aid you in telling us the date that that certificate of incorporation was filed? A. No, I do not have anything here that would. My best recollection is February, 1959. The exact date I don't know.

Q. What was the capitalization of the Puerto Rican corporation? A. It was capitalized for five thousand dollars.

(18) Q. How many shares of stock? A. Five thousand shares at one dollar.

Q. The five thousand dollars was supplied by, whom? A. By Peerless Oil & Chemical Corporation.

Q. The New York corporation? A. The New York corporation.

Q. These five thousand shares of Puerto Rican corporation, Mr. Carey, that you told us about, these shares, since incorporation of the Puerto Rican corporation, have been owned by the New York corporation, have they not, sir? A. Except for qualifying shares held by directors.

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(23) Q. And did the Puerto Rican corporation engage in any business before this building was constructed? A. Yes.

(24) Q. And where did it have an office? A. It had an office in Banco DePonce building in Ponce, Puerto Rico.

Q. It was selling and distributing chemicals? A. Yes.

Q. On what date did it begin that work in this office building in Ponce, Puerto Rico? A. Well, it commenced about the same time as the corporation was organized, around February of 1959.

Q. Did it take a lease there on the office?

Mr. Mulvehill: This is the original office?

Mr. Engelman: Yes.

A. It was a month to month basis. There was no term.

Q. Did the New York corporation enter into the lease? A. No.

Q. Did it guarantee the lease? A. No.

Q. Did any of the officers or the directors of the New York corporation as individuals pay the rent or guarantee the lease? A. No.

Q. Now, when the Puerto Rican corporation purchased (25) these five cuerdas of land from the estate, it paid out its paid in capital of five thousand dollars? A. No.

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Q. Mr. Carey, if, as you have previously testified, the corporation paid five thousand dollars for the five cuerdas of land, then it paid out its entire paid in capital, did it not? A. No. The corporation negotiated a mortgage.

Q. For how much? A. For sixty thousand dollars.

Q. On the land? A. Secured by the land.

Q. And negotiated this mortgage with whom? A. Banco DePonce in Ponce, Puerto Rico.

Q. You say that the Puerto Rican corporation obtained a loan of sixty thousand dollars on land for which it had paid five thousand dollars? (26) A. Well, the land is part of the security. The loan was based upon projection of business for the new corporation. And on that basis the loan was granted.

Q. Did the New York corporation guarantee the loan or the note? A. No, it did not.

Q. Did you guarantee the loan or the note? A. Yes, I did.

Q. Did either of your two brothers, Mr. Edward M. Carey or Mr. John R. Carey, join in the guarantee of the loan or note? A. No.

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Q. When was the building completed, Mr. Carey? (27) A. It was completed in late 1959.

Q. The Puerto Rican corporation then moved into that building? A. It commenced the use of the building, but it still maintained an office in Ponce.

Q. The address? A. Guayanilla, Puerto Rico.

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(28) A. Marketing chemicals in Puerto Rico.

Q. It doesn't manufacture? A. No manufacturing.

Q. After the certificate of incorporation was filed in Puerto Rico, there was a meeting of the incorporators, and the directors were appointed, were they not sir? A. I don't recall whether there was a formal meeting, but directors were appointed; yes.

Q. Were you present at that meeting, Mr. Carey? A. Yes.

Q. That was at the lawyer's office? A. Yes, Mr. Vivas' office in Ponce, yes.

Q. In addition to yourself, were any of your brothers present at that meeting? A. No.

Q. Anyone else by the name of Carey other than yourself? A. No.

Q. At this meeting of the incorporators who was then designated as the directors of the Puerto Rican corporation? A. John J. Orr and Jose Vivas.

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(29) Q. You told us Orr and Vivas were the directors. Will you tell us the rest, please? A. Hugh L. Carey and myself.

Q. Now, the directors then proceeded to elect officers of the Puerto Rican corporation? A. Yes.

Q. Would you tell me who was elected as officers at this meeting in Ponce, in the lawyer's office? A. Well, I am president. John J. Orr is vice president. Jose Vivas is secretary and treasurer. Hugh Carey was vice president.

Q. Now, at that time, as of the time of this meeting, what was the address of Hugh L. Carey? A. He was living at 715 East 22nd Street, Brooklyn.

Deposition of Dennis Carey.

Q. You were at the Manhasset address that you gave? A. Yes.

Q. Mr. Orr's address? (30) A. Ponce, Puerto Rico.

Q. He is still at that address? A. Yes.

Q. Mr. Vivas' was Ponce, Puerto Rico? A. Yes.

Q. He is still at that address? A. Yes.

Q. Had Mr. Orr been associated with you or your brothers in business here in New York before? A. No, he had not.

Q. Had Mr. Vivas been associated with you or your brothers in business in New York? A. No.

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(31) Q. Now, the shares of stock of the Puerto Rican corporation, those are in the hands of the New York corporation physically? Those shares are where, Mr. Carey? A. Well, they are in Puerto Rico.

Q. They are in Puerto Rico? A. Yes.

Q. In the possession of whom? A. Mr. Vivas.

Q. And the four shares you have referred to as qualifying shares that the directors have, where are those shares physically, the certificates? A. In the possession of Mr. Vivas.

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(32) Q. Now, since the organization of the Puerto Rican corporation has the New York corporation made any loans or advances to the Puerto Rican corporation? A. No.

Q. Has it guaranteed any obligation, contracts or any other obligations of the Puerto Rican corporation? A. No.

Q. Have you or any of your brothers, including all of them, have any of you made any loans or advances to the Puerto Rican corporation? A. None.

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(34) Q. No stockholders' meeting. Do you have directors' meetings? A. We have meetings in Puerto Rico.

Deposition of Dennis Carey.

Q. Since the corporation was organized, how many directors' meetings has the Puerto Rican corporation held in Puerto Rico? A. They are fairly numerous. We meet several times a year.

Q. Have you held any directors' meetings here in New York? A. No.

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(36) Q. What are your duties as president of the Puerto Rican corporation? A. Generally to decide what policy the corporation will follow.

Q. By that would you elaborate on that, please? A. Well, I would be concerned with what products they might sell, what possibilities there are for new business in Puerto Rico. I might offer advice to the man who is responsible for the day to day operation, if he asked for such advice. I go to Puerto Rico periodically to meet with people working there. That is about the extent of my duties.

Q. And how often do you go to Puerto Rico in connection with the Puerto Rican corporation? A. About once every month or every two months. It varies depending upon—

Q. How long do you remain there on the average? A. Anywhere from three days to a week.

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(38) Q. Now, the chemicals which the Puerto Rican corporation sells and distributes in Puerto Rico are purchased from whom, Mr. Carey? A. Well, they are purchased from several suppliers. The principal supplier is Wyandotte Chemicals International. Substantial supplies are purchased from Peerless Oil & Chemical Corporation in New York.

Q. That is the defendant New York corporation? A. New York corporation, right. Some products are purchased from the Jones Chemical Company in Buffalo. Some are purchased from F.M.C. International, and some are purchased from Venezuela.

Deposition of Dennis Carey.

Q. Now, I think you told us, Mr. Carey, that a substantial portion of the chemicals distributed by the Puerto Rican corporation are purchased from the defendant New York corporation? A. Yes.

Q. What percent would you say, sir approximately?

(39) A. I would estimate—

Mr. Mulvehill: Are you thinking in dollars?

Mr. Engelman: Well, he can give me percentage in dollars of in gross tonnage, volume or anything that he uses in the industry any other index.

The Witness: Well, in gross, in a matter of tonnage, it would be ten percent.

Q. Dollars? A. Dollars would be thirty percent.

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(45) Q. Now, with respect to these chemicals that are similar or sold by both corporations you study the market, do you not, Mr. Carey? A. In Puerto Rico?

Q. Both in Puerto Rico or here. A. Do you mean the market for selling these chemicals?

Q. Yes. A. Yes. Although I don't have any reason to be concerned in Puerto Rico any more because that is now handled completely locally by local solicitation.

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(62) Q. Mr. Carey, would you tell us what the New York corporation does for the Puerto Rican corporation in the case of those chemicals which the New York corporation does not keep in its warehouse? A. Well, there are instances of chemicals which would not keep in our warehouse that we would purchase from a manufacturer and then resell them to the Puerto Rican corporation.

Q. How would that transaction be handled? A. The New York corporation would purchase the material from a manufacturer.

Q. Paid for? A. Yes. They would be shipped into Long Island City to our warehouse or they might in some cases be shipped directly to a pier and then shipped to Puerto Rico, and billed the same as the other shipments would be billed to the Puerto Rican corporation.

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(63) Q. In those cases where the chemicals supplied are shipped to the Puerto Rican corporation at your request and where they billed the Puerto Rican corporation directly, would that be on the order of the New York corporation? A. Well, it wouldn't be handled that way. The New York corporation would be billed by the—

Q. Supplier? A. By the supplier and we would then in turn resell the material to the Puerto Rican corporation and bill them.

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(71) Q. Has the New York corporation guaranteed payment or assumed any liability of the Puerto Rican corporation in this transaction? A. No.

Q. Have you or any of your brothers individually made a guarantee or assumed any responsibility? A. No.

Q. Have you had any correspondence or telephone conversation with Jones in connection with the sale of these cylinders of gas? A. Jones has called me on occasions.

Q. In your New York office? A. Yes.

Q. In connection with delivery? A. Not too much in connection with delivery.

Q. As near as you can recall, Mr. Carey, whatever it was? A. Most of their phone calls have been concerned with soliciting business in Puerto Rico.

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(72) Q. Food, Machinery & Chemicals International, would you briefly describe what business they have with the Puerto Rican corporation? A. They have made oc-

casional shipments of phosphate to the Puerto Rican corporation.

Q. And has the New York corporation or yourself— A. Excuse me. And they have also shipped chlorine to the Puerto Rican corporation.

Q. Has the New York corporation made payments for the Puerto Rican corporation at any of those transactions? A. No. Anything sold by F.M.C. sold to the Puerto Rican corporation they paid direct.

Q. Have you or your brothers had any conversation with F.M.C. International with respect to sales or any other transactions involving the Puerto Rican corporation? A. I have had conversations with people from F.M.C. International.

Q. In your New York office? A. And Puerto Rico, both.

Q. Both? (73) A. Both.

Q. As far as your New York office is concerned, they would be in connection with more sales to the Puerto Rican corporation? A. Principally.

Q. They solicited additional business? A. Yes.

Q. It would be substantially the same thing as the Jones Company? A. Yes.

Q. In other words, both Jones and F.M.C. would solicit the sale of more of their respective products to the Puerto Rican corporation, and for that purpose they called you at New York? A. Well, yes. And on occasions they had people going to Puerto Rico and they would call to coordinate their visit with our people in Puerto Rico.

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(75) Puerto Rico. Do you have authorization to sign checks for the Puerto Rican corporation, Mr. Carey? A. Yes.

Q. From time to time do you sign checks here in New York? A. I have on occasions.

(78) Q. It is the shipment involved in this lawsuit. A. Chlorine.

Q. Right. A. But the chlorine is not sold to Peerless Chemicals Puerto Rico nor was it sold by Westvaco. The material was sold and billed to Peerless Oil & Chemical Corporation, the New York corporation, who in turn sold it to Puerto Rico. The empty cylinders for refilling were returned by the Puerto Rican corporation consignee to Westvaco in Baltimore, Maryland where Westvaco took the cylinders on one of their rail cars and shipped them back to their plant for refilling.

(94) Q. Does the Puerto Rican corporation pay any taxes to the State of New York? A. No.

Q. Has the Puerto Rican corporation received authorization to do business in the State of New York? A. No.

Q. Has it designated an agent for the service of process? A. No.

(118) Q. Now, the Puerto Rican corporation does not have its own telephone listing here in New York, does it? A. No.

(122) Q. The cylinders are owned by the Puerto Rican corporation? A. Yes.

Q. From whom did they purchase the cylinders? A. They purchased them from the New York corporation.

(127) Q. Mr. Carey, have you signed contracts in behalf of the Puerto Rican corporation here in New York? A. I don't recall any contracts that I have signed in New York, No.

Q. Other than correspondence, what documents have you signed here in New York in behalf of the Puerto Rican

corporation? A. I have occasionally signed checks. That's about the extent of it.

Q. Correspondence? A. Correspondence.

Q. Checks drawn on the Puerto Rican bank? A. That's right.

Q. How did it come about that you signed the checks of the Puerto Rican corporation here in New York, Mr. Carey? A. Probably a check made out to my own order that I signed or something that they wanted me to look at before it was remitted.

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(128) Examination by Mr. Mulvehill:

Q. In the examination of Mr. Engelman, he referred to expenses that were paid to you by the Puerto Rican corporation, the Peerless Corporation. What expenses were they? In reference to what? A. Traveling to and from Puerto Rico and in Puerto Rico.

Q. Were there any expenses other than that? A. No.

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(131) Q. Where are the minute books of the meetings of the stockholders and the directors of the corporation? A. They are in the custody of Mr. Vivas.

Q. In Puerto Rico? A. In Puerto Rico.

Q. The stock record books, where are they? A. That is in Puerto Rico. That is in Mr. Vivas' possession.